

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Petitions For Waiver To Deploy 700 MHz Public)	PS Docket No. 06-229
Safety Broadband Networks)	DA 10-1748

**COMMENTS OF THE CITY OF CHARLOTTE
PETITIONS FOR WAIVER TO DEPLOY 700 MHz PUBLIC SAFETY
BROADBAND NETWORKS**

The City of Charlotte, North Carolina (Charlotte) submits these comments responding to the Commission’s September 15, 2010 *Public Notice*, DA 10-1748, addressing waiver petitions filed by public safety entities seeking authority to deploy public safety broadband systems on a local or regional basis in the 700 MHz public safety spectrum segment. Charlotte received a waiver to deploy a 700 MHz broadband network under Commission’s *May 12, 2010 Order*.¹

In these comments, Charlotte addresses the *Public Notice*’s inquiry regarding eligibility under Section 337 of the Communications Act of 1934, as amended. Charlotte urges the Commission to pursue a path ensuring that the 700 MHz public safety segment is preserved for core public safety responsibilities while accommodating the reality that networks must have an underlying economic viability.

¹ In the Matter of Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, *Order*, FCC 10-79, PS Docket 06-229, (May 12, 2010).

Eligibility to Use the 700 MHz Broadband Spectrum

The *Public Notice* notes that “several of the petitions include signatories such as investor-owned utilities or other entities whose eligibility is not readily apparent” under the Commission’s interpretation of Section 337 of the Communications Act.² The petitions advocate that broadening the eligibility criteria will facilitate network build out by assisting in securing funding to construct and maintain the network. These petitions appear to propose allowing non-public safety services the same priority and access as those currently eligible under the Commission’s rules.

Charlotte urges caution with regard to proposals expanding eligibility and providing access and priority to entities whose sole or principal purpose is not to protect the safety of life, health, or property.³ The law and the Commission’s implementation seek to ensure adequate capacity so all core public safety agencies have similar access and priority, particularly during an emergency. It is these core agencies whose emergency services are most critical and whose ability to communicate between and among each other, irrespective of their geographic boundaries or jurisdiction, must be preserved.

To expand the universe of eligible entities based on their investment in the network skews this principle. A private entity contributing to the design, construction and management of the network will expect capacity, priority and management participation paralleling its investment. It will not be a mere customer. Such a proposal has the potential to dilute the priority and access of core emergency service agencies. It

² PN at pg. 2.

³ In the Matter of Service Rules for the 698-746, 746-762 and 777-792 MHz Bands, et al, *Third Notice of Proposed Rulemaking*, FCC 08-230, WT Docket No. 06-150 and PS Docket No. 06-229 at paragraph 324, citing Section 337(f)(1)(A) of the Communications Act.

will also challenge the responsibility of the Public Safety Spectrum Trust (PSST) to coordinate how the spectrum is used. Instead of looking to one government agency to carry out the Commission's rules, the PSST will now encounter commercial interests. Disparities across the country will undercut the objective to promote an interoperable nationwide broadband network.

Charlotte suggests that the Commission's inquiry is not simply a question whether to expand eligibility to the network beyond core public safety services versus denying revenue sources able to contribute to constructing and maintaining a network. That the economic viability of the nationwide network remains its greatest challenge must be at the forefront of Commission focus. For this reason, Charlotte believes the Commission should reexamine the strictures of its *Third Notice of Proposed Rulemaking* and its tentative conclusions addressing entities that may access the network. It should consider a more flexible approach

The Commission should review the capacity of the network on a day-to day basis to meet core public safety requirement, including the priority and access associated with a large or small emergency. It should also review the needs of entities outside this core to use the network under the management of the waiver recipient, a public safety entity. Charlotte believes that such use can be consistent with the law's direction that the spectrum serve the purpose of protecting the safety of life, health or property.

Charlotte believes that broadband technology can accommodate enormous capacity on a daily basis able to meet the priority and capacity demands of core agencies. A more flexible model can emerge that, through management and implementing protocols, as established by the public agency in cooperation with the PSST, promotes

and preserves the requirements, access and priority of core agencies while providing the network a revenue source from non-core users.

The pragmatics of emergency response dictates pursuing this path. First responders, in the large and small incident, frequently call upon a wide variety of public resources and a smaller set of private resources to provide critical assistance. Their participation in the network prior to any incident is crucial to planning and coordination responsibilities. Schools are called upon for command posts and shelters; bus, rail and other facilities are needed for transport; utilities are called upon to turn off or redirect water and other resources.

Access by these non-core entities to the network is integral to effective response. Use of the network outside of actual incidents but in fulfilling the law's purpose should be given careful consideration. The use of the network where core public safety management, use and priority is protected can provide crucial revenue contributing to the economic viability of a nationwide interoperable broadband network. Charlotte urges the Commission to examine such alternatives.

Charlotte's suggestion is consistent with the Department of Homeland Security (DHS) *National Preparedness Guidelines*. DHS designates Interoperable Communications as one of its eight priorities. It addresses "secondary responders" in its Target Capabilities List and states that-

"Communications interoperability is the ability of public safety agencies (police, fire, EMS) and service agencies (public works, transportation, hospitals, etc) to talk within and across agencies and jurisdictions via radio and associated communications systems, exchanging voice, data and/or video with one another on demand, in real time, when needed, and when authorized. It is essential that public safety has the intra-agency operability it needs, and that it builds its systems toward interoperability."⁴

⁴ *Target Capabilities List, A companion to the National Preparedness Guidelines*, United State Department of Homeland Security (September 2007) at page 29. <http://www.fema.gov/pdf/government/training/tcl.pdf>

Charlotte urges the Commission to examine how each waiver petitioner will fund, deploy and operate a system to meet the responsibilities of a nationwide network. It should analyze opportunities that fully protect core public safety use and management while allowing flexibility for the inclusion of non-core entities that provide predictable revenue streams that can make this critical national goal a viable economic undertaking.

Respectfully submitted,

CITY OF CHARLOTTE, NORTH CAROLINA

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